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No. 98824-2

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CITY OF SEATTLE,

Respondent,

v.

STEVEN G. LONG,

Petitioner.

AMICI CURIAE BRIEF OF JUVENILE LAW CENTER, AFRICAN
AMERICAN JUVENILE JUSTICE PROJECT, CENTER FOR
CHILDREN AND YOUTH JUSTICE, CHILDREN AND FAMILY
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IN SUPPORT OF PETITIONER STEVEN G. LONG

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<i>Timbs v. Indiana</i> , 139 S. Ct. 682, 203 L. Ed. 2d 11 (2019)	2, 4, 13, 14
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Other Authorities

Alex R. Piquero & Wesley G. Jennings, <i>Research Note: Justice System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders</i> , 15 YOUTH VIOLENCE & JUV. JUST. 1 (2016)	10, 16
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CARL E. POPE ET AL., U.S. DEP’T OF JUSTICE, DISPROPORTIONATE MINORITY CONFINEMENT: A REVIEW OF THE RESEARCH LITERATURE FROM 1989 THROUGH 2001 5 (2002)	14
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CHILD TRENDS DATABANK, YOUTH EMPLOYMENT (2015), https://bit.ly/39MvZPn	9
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Gary Rivlin, <i>The Long Shadow of Bad Credit in a Job Search</i> , N.Y. TIMES (May 11, 2013), http://nyti.ms/2MpaY4A	11
Gene Balk, <i>Seattle Household Net Worth Ranks Among Top in Nation—But Wealth Doesn’t Reach Everyone</i> , SEATTLE TIMES (Feb. 19, 2019), http://bit.ly/3aACJz5	17
JAMES BELL & LAURA JOHN RIDOLFI, W. HAYWOOD BURNS INST., ADORATION OF THE QUESTION: REFLECTIONS ON THE FAILURE TO REDUCE RACIAL & ETHNIC DISPARITIES IN THE JUVENILE JUSTICE SYSTEM 5-8 (2008)	15

Jeffrey P. Thompson & Gustavo Suarez, <i>Exploring the Racial Wealth Gap Using the Survey of Consumer Finances 2</i> (FEDS Working Paper No. 2015-076, 2015), http://bit.ly/39M43el	19
JESSICA FEIERMAN ET AL., DEBTORS' PRISON FOR KIDS? THE HIGH COST OF FINES AND FEES IN THE JUVENILE JUSTICE SYSTEM (2016), https://bit.ly/3jje0D8	8, 10, 11
Julianne Malveaux, <i>Terrorism and Economic Injustice After Enslavement</i> , ACLU, http://bit.ly/3oLOZBY	19
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Laurence Steinberg, <i>Adolescent Development and Juvenile Justice</i> , 5 ANN. REV. CLINICAL PSYCHOL. 459 (2009).....	8
Letter from the Washington Supreme Court to Members of the Judiciary and the Legal Community (June 4, 2020), https://bit.ly/3tqj9hG	12, 13, 14, 20
Louis Lee Woods, <i>The Federal Home Loan Bank Board, Redlining, and the National Proliferation of Racial Lending Discrimination, 1921-1950</i> , 38 J. URBAN HIST. 1036 (2012).....	19
Matt Tarpey, <i>The Changing Face of U.S. Jobs: Composition of Occupations by Gender, Race, and Age from 2001-2014</i> , CAREER BUILDER (Apr. 14, 2015), http://cb.com/3pNkPiZ	9
MEIZHU LUI ET AL., THE COLOR OF WEALTH: THE STORY BEHIND THE U.S. RACIAL WEALTH DIVIDE 30-31, 35 (2006).....	18
Michael D. Makowsky et al., <i>To Serve and Collect: The Fiscal and Racial Determinants of Law Enforcement</i> , 48 J. LEGAL STUD. 189 (2019).....	14

Moritz Kuhn et al., <i>Income and Wealth Inequality in America, 1949-2016</i> 1 (Fed. Rsrv. Bank of Minneapolis Inst. Working Paper 9, 2018), http://bit.ly/39MLsPr	19
NATHAN JAMES, CONGRESSIONAL RESEARCH SERVICE, OFFENDER REENTRY: CORRECTIONAL STATISTICS, REINTEGRATION INTO THE COMMUNITY, AND RECIDIVISM (2015), https://bit.ly/3pL4n2A	12
OJJDP STATISTICAL BRIEFING BOOK, https://bit.ly/3pSZF2T	15
SHAWN FREMSTAD & AMY TRAUB, DEMOS, DISCREDITING AMERICA: THE URGENT NEED TO REFORM THE NATION'S CREDIT REPORTING INDUSTRY 16-22 (2011), https://bit.ly/3cD2NMq ;.....	11
Ta-Nehisi Coates, <i>The Case for Reparations</i> , ATLANTIC (June 2014), http://bit.ly/2LgBigu	19
Thomas Craemer et al., <i>Wealth Implications of Slavery and Racial Discrimination for African American Descendants of the Enslaved</i> , 47 REV. BLACK POL. ECON. 218 (2020).....	17
Trymaine Lee, <i>How America's Vast Racial Wealth Gap Grew: By Plunder</i> , N.Y. TIMES MAGAZINE (Aug. 14, 2019), http://nyti.ms/3tk1ND3	18
U.S. DEPARTMENT OF JUSTICE, ADVISORY FOR RECIPIENTS OF FINANCIAL ASSISTANCE FROM THE U.S. DEPARTMENT OF JUSTICE ON LEVYING FINES AND FEES ON JUVENILES 3-5 (2017), https://bit.ly/39JspW6	13
W. HAYWOOD BURNS INST., UNITED STATES OF DISPARITIES, http://bit.ly/2Mo2NWb	16
William “Sandy” Darity & Kirsten Mullen, <i>Black Reparations and the Racial Wealth Gap</i> , BROOKINGS (June 15, 2020), http://brook.gs/3aACPGX	18
Youth Equality and Reintegration (YEAR) Act, S. B. 5564, 64th Leg., 2015 Reg. Sess. § 1, https://bit.ly/2YK9xQt	8

IDENTITY AND INTEREST OF AMICI CURIAE

The identity and interest of *amici curiae* are set forth in the accompanying Motion for Leave to File an *Amici Curiae* Brief.

INTRODUCTION

A defendant's culpability and individual circumstances are central to the proportionality of a punishment. Yet the court below ignored Petitioner Long's personal circumstances and instead created a one-size-fits-all proportionality test under the Excessive Fines Clause, holding that a fine is constitutional if it reflects the cost of enforcement and is authorized by the Legislature.¹ *Seattle v. Long*, 13 Wn. App. 2d 709, 729-31, 467 P.3d 979 (2020). Although Petitioner is an adult, *Amici* write here to highlight the devastating impact this decision could have on youth likewise subject to various financial penalties. Adopting the lower court's test would also directly result in greater harms to Black, Brown, and Indigenous youth and families, undermining this Court's goal of recognizing and addressing systemic racial injustice. For these reasons, *Amici* respectfully urge this Court to adopt an Excessive Fines Clause proportionality test that includes

¹ Mr. Long's Petition for Review notes that the fine at issue was not in fact approved by the Legislature, but rather set by contract between police employees and a towing company. (Pet. for Review at 12-14.) In any case, the legislature's imprimatur does not make an act constitutional. *See State v. Grocery Manufacturers Ass'n*, 195 Wn.2d 442, 476, 461 P.3d 334 (2020).

consideration of individual circumstances.

STATEMENT OF THE CASE

Amici curiae adopt Petitioner’s Statement of the Case.

ARGUMENT

I. THE EIGHTH AMENDMENT PROHIBITION ON EXCESSIVE FINES REQUIRES A MEANINGFUL PROPORTIONALITY INQUIRY

The Eighth Amendment’s prohibition against excessive fines is “fundamental to our scheme of ordered liberty” and “deeply rooted in this Nation’s history and tradition.” *Timbs v. Indiana*, 139 S. Ct. 682, 689, 203 L. Ed. 2d 11 (2019) (quoting *McDonald v. Chicago*, 561 U.S. 742, 767, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010)). The proportionality of fines mandated by the Eighth Amendment is not a *pro forma* requirement, but a robust inquiry that was established in response to historical misuse of fines against disfavored individuals and groups. *Id.* Judicial scrutiny is especially critical because “the State stands to benefit” from imposing more and higher fines and fees, regardless of proportionality. *Harmelin v. Michigan*, 501 U.S. 957, 978 n.9, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991).² While fines

² A study of Washington municipal courts during the Great Recession illustrates this risk. The amount of fines and fees issued per capita increased steeply between 2000 and 2014, as did the number of traffic infraction cases filed (increasing fortyfold in district courts). The data suggest financial pressures “may be drivers of enforcement and prosecutorial practices.” Frank Edwards, *Fiscal Pressures, the Great Recession, and Monetary Sanctions in Washington Courts of Limited Jurisdiction*, 4 UCLA CRIM. J. L. REV. 157, 157 (2020).

should never be imposed as “a source of revenue,” *State v. Grocery Manufacturers Ass’n*, 195 Wn.2d 442, 476, 461 P.3d 334 (2020) (quoting *Timbs*, 139 S. Ct. at 689), “[t]here is good reason to be concerned that fines, uniquely of all punishments, will be imposed in a measure out of accord with the penal goals of retribution and deterrence.” *Harmelin*, 501 U.S. at 978 n.9.³

The Supreme Court reserved the question of whether one personal circumstance—financial status—is relevant to proportionality of a fine. *United States v. Bajakajian*, 524 U.S. 321, 340 n.15, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998). *See also United States v. United Mine Workers of Am.*, 330 U.S. 258, 304, 67 S. Ct. 677, 91 L. Ed. 884 (1947) (excessive fines analysis must consider “defendant’s financial resources and the consequent seriousness of the burden” to the individual). Nonetheless, both the U.S. Supreme Court and this Court’s jurisprudence clearly require that youth be taken into account under an Eighth Amendment proportionality analysis, dictating the conclusion that personal circumstances are also critical to the proportionality of a fine. *E.g.*, *Miller v. Alabama*, 567 U.S. 460, 465, 471, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012) (“[C]hildren are constitutionally

³ While it is clear that legal systems seek fines and fees to generate revenue, it is less clear that they succeed. Rather, the high cost of collection may outweigh the economic gain. *See, e.g.*, ALEXANDER KAPLAN ET AL., BERKELEY LAW POLICY ADVOCACY CLINIC, HIGH PAIN, NO GAIN: HOW ADMINISTRATIVE FEES HARM LOW-INCOME FAMILIES IN ALAMEDA COUNTY, CALIFORNIA 12 (2016), <http://bit.ly/3cFEKwC>.

different from adults for purposes of sentencing.”); *Graham v. Florida*, 560 U.S. 48, 82, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010); *Roper v. Simmons*, 543 U.S. 551, 575, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005); *State v. Bassett*, 192 Wn.2d 67, 81, 428 P.3d 343 (2018) (“[C]hildren warrant special protections in sentencing.”); *State v. Houston-Sconiers*, 188 Wn.2d 1, 8-9, 391 P.3d 409 (2017). *See infra* section II. This approach is consistent with other courts’ recognition that individual circumstances may be “critical” to the excessive fines analysis. *United States v. Hines*, 88 F.3d 661, 664 (8th Cir. 1996) (personal ability to pay is “critical” in assessing proportionality of a fine). *See State v. Timbs*, 134 N.E.3d 12, 36 (Ind. 2019) (personal finances are relevant to proportionality); *Tellevik v. Real Property*, 83 Wn. App. 366, 374-75, 921 P.2d 1088 (1996) (trial court erred by failing to consider proportionality factors including “effect of forfeiture on owner”).

II. THE PROPORTIONALITY ANALYSIS MUST ALLOW FOR CONSIDERATION OF INDIVIDUAL CIRCUMSTANCES INCLUDING YOUTH

The Excessive Fines Clause of the Eighth Amendment was incorporated into the Fourteenth Amendment for the first time in 2019. *Timbs*, 139 S. Ct. at 686-87. While neither the U.S. Supreme Court nor this Court has since ruled on the relevance of personal circumstances to the proportionality of a fine, the United States Supreme Court’s sentencing cases make clear that courts must consider youthfulness in crafting a

proportionate punishment. *Roper*, 543 U.S. at 575 (capital punishment); *Graham*, 560 U.S. at 82 (life sentence without parole for non-homicide offense); *Miller*, 567 U.S. at 465 (mandatory life imprisonment without parole). See *Houston-Sconiers*, 188 Wn.2d at 8-9 (mandatory sentence enhancement).

A. Eighth Amendment Standards Must Calibrate For Youth

This Court has consistently recognized that “[c]hildren are different” when it comes to proportional sentencing. *Houston-Sconiers*, 188 Wn.2d at 8-9 (quoting *Miller*, 567 U.S. at 481). The decree that “youth matters” is not limited to discretionary decisions about extreme sentences; rather, any “criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.” *Id.* at 8 (quoting *Graham*, 560 U.S. at 76). Mere “numerical proportionality” is not sufficient when it comes to youth. “[T]he Eighth Amendment requires another protection” when mandatory penalties are imposed on youth—“the exercise of discretion.” *Id.* at 9, 19 n.4 (judges have “absolute discretion” to depart from mandatory sentences imposed on youth). See also *State v. D.L.W.*, 14 Wn. App. 2d 649, 655-57, 472 P.3d 356 (2020) (considering youthfulness in assessing mandatory restitution).

By foreclosing judges from considering culpability and personal circumstances in assessing proportionality, the Court of Appeals’ excessive

fines inquiry conflicts with these fundamental principles. Youth matters to proportionality in at least two ways. First, a youth's lessened culpability mitigates the "gravity of [their] offense." *See Bajakajian*, 524 U.S. at 337. Second, financial penalties typically applied to adults have even more severe effects when imposed on children, because children almost universally lack resources to pay. *See Miller*, 567 U.S. at 475; *Graham*, 560 U.S. at 70-71. An employed, housed adult and a schoolchild facing a \$500 penalty "receive the same punishment in name only." *See id.* at 70.

This issue is far from abstract: fines and fees imposed on youth pervade Washington juvenile, criminal, and municipal courts. Although the 2015 Youth Equality and Reintegration (YEAR) Act abolished some juvenile court fees, others are still regularly imposed, including a mandatory victim's penalty assessment of \$100 and DNA collection fee of \$100. RCW 7.68.035(1)(b); 43.43.7541. Administrative, treatment, and evaluation fees may be ordered, as well as fines of up to \$500. RCW 13.40.640; 13.40.165(6)(b); 13.40.162(4); 13.40.020(3)(a).

Youth also face fines and fees outside of juvenile court. Children as young as 14 may be prosecuted in district or superior courts for certain charges or after a decline hearing, while children aged 16 or 17 accused of licensing, traffic, or civil offenses must appear in municipal court with its attendant penalties. RCW 13.40.110; 13.04.030(1)(e)(iii); 13.40.020(15).

These youth are subject to a range of mandatory and discretionary fines and fees that can be insurmountable even for adults. *E.g.*, RCW 7.68.035 (victim penalty assessment); RCW 43.43.7541 (DNA collection fee); RCW 9.68A.105, 10.99.080, 69.50.430 (charge-specific). *See* Erasmus Baxter, *Despite Reform Attempts, Court-Imposed Costs Burden Low-Income Defendants*, SEATTLE TIMES (July 14, 2019), <http://bit.ly/2YK9a8x> (adults living in encampments owed median court debt of \$3,000).

B. Youth’s Reduced Culpability Diminishes The Gravity Of An Offense

Both this Court and the U.S. Supreme Court have consistently recognized that “[t]he differences between children’s and adults’ culpability matter on a constitutional level in criminal sentencing.” *Matter of Domingo-Cornelio*, 196 Wn.2d 255, 259, 474 P.3d 524 (2020) (citing *State v. Ramos*, 187 Wn.2d 420, 428, 387 P.3d 650 (2017)); *see supra* section I. An increasingly settled body of developmental research confirms what “any parent knows”: youth is a “time and condition of life” marked by behaviors, perceptions, and vulnerabilities that change with age. *Roper*, 543 U.S. at 569 (second quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115, 102 S. Ct. 869, 71 L. Ed. 2d 1 (1982)). Because of their “lack of maturity” and “underdeveloped sense of responsibility,” youth are prone to “impetuous and ill-considered actions and decisions.” *Roper*, 543 U.S. at 569 (quoting

Johnson v. Texas, 509 U.S. 350, 367, 113 S. Ct. 2658, 125 L. Ed. 2d 290 (1993)).⁴ Indeed the Supreme Court has repeatedly acknowledged that youth “lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.” *J.D.B. v. North Carolina*, 564 U.S. 261, 272, 131 S. Ct. 2394, 180 L. Ed. 2d 310 (2011) (quoting *Bellotti v. Baird*, 443 U.S. 622, 635, 99 S. Ct. 3035, 61 L. Ed. 2d 797 (1979) (plurality opinion)).

C. Financial Penalties Impose Unique Harms On Youth

1. Children Cannot Pay Financial Penalties

Youth as a class are generally unable to pay fines and fees. *See generally* JESSICA FEIERMAN ET AL., DEBTORS’ PRISON FOR KIDS? THE HIGH COST OF FINES AND FEES IN THE JUVENILE JUSTICE SYSTEM (2016) (highlighting challenges youth face in paying fines or fees) [hereinafter DEBTORS’ PRISON FOR KIDS], <https://bit.ly/3jje0D8>.⁵ Youth under 18 face significant restrictions on their ability to work, contract, and obtain credit, and, in Washington, are required to attend school in most cases. *See, e.g., J.D.B.*, 564 U.S. at 272 (quoting *Eddings*, 455 U.S. at 115) (describing

⁴ In line with scientific advances, this Court has also considered the mitigating qualities of emerging adults over age 18. *State v. O’Dell*, 183 Wn.2d 680, 695, 358 P.3d 359 (2015) (en banc). *See* Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANN. REV. CLINICAL PSYCHOL. 459, 467-469 (2009) (deficits of older adolescents).

⁵ The YEAR Act likewise acknowledged this problem, noting that mandatory fines and fees may “plac[e] insurmountable burdens on juveniles attempting to become productive members of society.” S. B. 5564, 64th Leg., 2015 Reg. Sess. § 1, <https://bit.ly/2YK9xQt>.

restrictions on youth); RCW 28A.225.010. Those old enough to legally work are increasingly shut out of the labor market: jobs that were once typically held by teens are filled by college graduates, workers over 55, and other adults seeking entry-level roles. Matt Tarpey, *The Changing Face of U.S. Jobs: Composition of Occupations by Gender, Race, and Age from 2001-2014*, CAREER BUILDER (Apr. 14, 2015), <http://cb.com/3pNkPiZ> (jobs held by teens aged 14 to 18 shrank by a third between 2001 and 2014); Andrew Soergel, *Why Teens are Getting Shut out of the Workforce*, U.S. NEWS & WORLD REP. (Mar. 26, 2015), <http://bit.ly/2MT7hE5>. The problem is worse for teens living in poverty. According to a report from Northeastern University, only 21 percent of teenagers from low-income families had jobs, compared to 38 percent of wealthier teens. ANDREW SUM ET AL., *THE DISMAL STATE OF THE NATION’S TEEN SUMMER JOB MARKET, 2008-2012, AND THE EMPLOYMENT OUTLOOK FOR THE SUMMER OF 2013* 4 (2013), <https://bit.ly/36IsIhY>. For the few youth who do find employment, working too much and too soon may lead to worsened academic performance and increased school drop-out rates, directly undermining rehabilitation. CHILD TRENDS DATABANK, *YOUTH EMPLOYMENT* (2015), <https://bit.ly/39MvZPn>.

2. *Financial Penalties Cause Long-Lasting And Severe Harms To Youth And Their Families*

Fines and fees can have devastating consequences for children and

their families, including increased economic stress, further justice system involvement, interference with family property, and family disruption. DEBTORS' PRISON FOR KIDS, *supra*, at 6-8.

Research shows that juvenile fines are associated with *increased* recidivism in youth, even when controlling for relevant demographic and case characteristics. The higher the fines, the greater the impact on recidivism. Alex R. Piquero & Wesley G. Jennings, *Research Note: Justice System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15 YOUTH VIOLENCE & JUV. JUST. 1, 1, 10 (2016). For youth in the juvenile justice system in particular, fines and fees inflict harm without even meeting their intended rehabilitative purpose.

The burden of fines and fees is borne not only by children but also by their families—without regard to culpability. In some cases, juvenile financial penalties are imposed directly on parents or guardians. *E.g.*, RCW 13.40.220(1)-(2) (cost of confinement); RCW 13.40.085 (diversion services fees). In other cases, parents take on the financial responsibility as part of their parental role and as the sole wage-earners in the family.⁶ The shared

⁶ The inverse of this problem also occurs in which a non-culpable child is punished by financial penalties imposed on their parent, as illustrated by the 72-hour rule at issue in Mr. Long's case. In 2020, 1,190 families with children were homeless in King County (in addition to 248 unaccompanied children). ALL HOME, COUNT US IN: SEATTLE/KING COUNTY POINT-IN-TIME COUNT OF INDIVIDUALS EXPERIENCING HOMELESSNESS 13-14 (2020), <https://bit.ly/39HEXNL>. Families who live in a vehicle—and are thus per se

punishment inflicted by juvenile fines and fees in particular conflicts with the well-established right of innocent people to be free from punishment. *See, e.g., Robinson v. California*, 370 U.S. 660, 667, 82 S. Ct. 1417, 8 L. Ed. 2d 758 (1962) (“Even one day in prison would be a cruel and unusual punishment for the ‘crime’ of having a common cold.”). For youth and families in poverty, seemingly minimal payments may require families to forego basic necessities, such as groceries. *See* DEBTORS’ PRISON FOR KIDS, *supra*, at 6. As the Ninth Circuit Court of Appeals has explained, juvenile financial penalties “ironically, impair the ability of [the parent] to provide . . . future support.” *Rivera v. Orange Cty. Probation Dep’t*, 832 F.3d 1103, 1111 (9th Cir. 2016).

If unpaid, fines and fees in both juvenile and adult courts are enforced as money judgments, leading to far-reaching and cascading harms for youth. RCW 13.40.192. The negative impact of a judgment on credit can be a significant barrier to success, especially for children with little or no other credit history. Bad credit history can limit access to higher education, employment, stable housing, healthcare, and even basic utilities, which are increasingly sold and priced based on credit history. SHAWN FREMSTAD & AMY TRAUB, DEMOS, DISCREDITING AMERICA: THE URGENT

indigent—are forced to move at least every three days or face insurmountable financial penalties. This poses serious problems for educational stability and the state’s “paramount duty” to provide education. Const. art. IX § 1.

NEED TO REFORM THE NATION'S CREDIT REPORTING INDUSTRY 16-22 (2011), <https://bit.ly/3cD2NMq>; Gary Rivlin, *The Long Shadow of Bad Credit in a Job Search*, N.Y. TIMES (May 11, 2013), <http://nyti.ms/2MpaY4A>. Because of bad credit, youth may be denied access to the very resources that correlate with reduced recidivism. NATHAN JAMES, CONGRESSIONAL RESEARCH SERVICE, OFFENDER REENTRY: CORRECTIONAL STATISTICS, REINTEGRATION INTO THE COMMUNITY, AND RECIDIVISM, 11-16 (2015), <https://bit.ly/3pL4n2A>. The resulting spiral of economic instability, “as predictable and counterproductive as it is intractable,” is devastating. *Rivera*, 832 F.3d at 1112 n.7. For young people just getting started, the harms are more severe and therefore the constitutional protection against excessive fines that much more critical.

III. A ONE-SIZE-FITS-ALL TEST TO DETERMINE PROPORTIONALITY WILL DISPROPORTIONATELY HARM BLACK, BROWN, AND INDIGENOUS YOUTH AND FAMILIES

In June 2020, this Court published an open letter recognizing the “persistent and systemic injustice that predates this nation’s founding.” Letter from the Washington Supreme Court to Members of the Judiciary and the Legal Community (June 4, 2020), [hereinafter “Supreme Court Letter (June 4, 2020)”], <https://bit.ly/3tqj9hG>. This injustice includes heightened justice system involvement that makes the payment of fines

particularly onerous for Black, Brown, and Indigenous youth and families. “One size fits all approaches to sentencing,” like the test promulgated by the Court of Appeals in this case, “reveal the institutional and systemic biases of our society” and “exaggerate[]” racial disparities in criminal enforcement. *State v. Moretti*, 193 Wn.2d 809, 839, 446 P.3d 609 (2019) (Yu, J., concurring). Without individualized consideration, courts will saddle Black, Brown, and Indigenous youth and families with fines and fees they cannot pay at a higher rate than white youth and families, at a rate disproportionate to their underlying conduct, and in amounts out-of-keeping with their financial resources.⁷ This disproportionality is a direct result of systemic racism—the “shameful legacy we inherit.” Supreme Court Letter (June 4, 2020).

A. Historically, States Used Intentionally Unaffordable Fines To Maintain Racial Oppression

Financial penalties in the United States did not arise in a vacuum. Rather, intentionally unaffordable fines were historically imposed on Black Americans to reduce political power and coerce involuntary labor. *Timbs*, 139 S. Ct. at 688-89. As the Supreme Court described in *Timbs*, Southern

⁷ The racially disparate impact of fines and fees imposed by federally-funded courts may also violate Title VI of the Civil Rights Act. U.S. DEPARTMENT OF JUSTICE, ADVISORY FOR RECIPIENTS OF FINANCIAL ASSISTANCE FROM THE U.S. DEPARTMENT OF JUSTICE ON LEVYING FINES AND FEES ON JUVENILES 3-5 (2017), <https://bit.ly/39JspW6>. The guidance was subsequently repealed, but the underlying legal analysis on this issue still applies.

states responded to the end of the Civil War by “enact[ing] Black Codes to subjugate newly freed slaves and maintain the prewar racial hierarchy.” *Id.* These laws, which were enforced along racial lines, imposed “draconian fines for violating broad proscriptions on ‘vagrancy’ and other dubious offenses.” *Id.* When Black Americans could not pay, states often forced them into labor to “pay off” these debts. *Id.* at 688-89, 697-98 (Thomas, J., concurring) (fines were used to “almost reenact[] slavery) (quoting Cong. Globe, 39th Cong., 1st Sess., 1621 (1866) (Rep. Myers))).⁸

B. Black, Brown, And Indigenous Youth Are Punished More Often And More Harshly Than White Youth, Exposing Them To Higher Financial Penalties Regardless Of Underlying Conduct

“[T]he injustices faced by black Americans are not relics of the past.” Supreme Court Letter (June 4, 2020). Rather, this Court recognized that there is “racialized policing and the overrepresentation of black Americans in every stage of our criminal and juvenile justice systems.” *Id.* Research shows that Black, Brown, and Indigenous youth consistently experience harsher dispositions and penetrate further into the juvenile legal system than white youth, even when controlling for alleged conduct. *See,*

⁸ Traces of this history persist today. One recent study showed how localities ramp up DUI and drug violation enforcement against Black and Latinx residents—but not white residents—during times of local fiscal distress to meet their economic needs. Michael D. Makowsky et al., *To Serve and Collect: The Fiscal and Racial Determinants of Law Enforcement*, 48 J. LEGAL STUD. 189, 211 (2019).

e.g., Alex R. Piquero, *Disproportionate Minority Contact*, 18 JUV. JUST. 59, 59-61 (2008). *See also* CARL E. POPE ET AL., U.S. DEP'T OF JUSTICE, DISPROPORTIONATE MINORITY CONFINEMENT: A REVIEW OF THE RESEARCH LITERATURE FROM 1989 THROUGH 2001 5 (2002) (25 of 34 studies comparing race and juvenile justice outcomes across the nation reported “race effects” leading to poorer outcomes for youth of color); JAMES BELL & LAURA JOHN RIDOLFI, W. HAYWOOD BURNS INST., ADORATION OF THE QUESTION: REFLECTIONS ON THE FAILURE TO REDUCE RACIAL & ETHNIC DISPARITIES IN THE JUVENILE JUSTICE SYSTEM 5-8 (2008) (noting disparate enforcement and punishment of Black, Indigenous, and Latinx youth).

As documented by the Office of Juvenile Justice and Delinquency Prevention, in 2019, Black youth made up just 15 percent of youth in the United States, yet they accounted for 35 percent of cases referred to juvenile court, 40 percent of youth detained, 39 percent of case petitions, 37 percent of adjudicated cases, 36 percent of adjudicated cases resulting in probation, and 42 percent of adjudicated cases resulting in placement. OJJDP STATISTICAL BRIEFING BOOK, <https://bit.ly/3pSZF2T>. Indigenous and Latinx youth are also treated more harshly in the juvenile system. In 2017, Indigenous youth were detained at a rate 3.2 times that of white youth, and Latinx youth at a rate 1.7 time that of white youth. *Id.* Post-adjudication, these disparities continued: adjudicated Indigenous youth were 2.8 times as

likely as white youth to be sent to residential placement (excluding tribal facilities), while Latinx youth were 1.4 times as likely. *Id.* The data in Washington is consistent: in 2017, Black and Indigenous youth were detained at a rate four times that of white youth, and Latinx youth at twice the rate of white youth. W. HAYWOOD BURNS INST., UNITED STATES OF DISPARITIES, <http://bit.ly/2Mo2NWb>.

At each legal decision point, penalties, fines, and fees stack up and multiply existing racial disparities. First, when Black, Brown, and Indigenous youth are arrested and convicted at higher rates, they also face conviction-related financial penalties at higher rates. Second, because youth of color spend more time on probation and in juvenile facilities than white youth, their families are liable for higher costs and fees. *See, e.g.,* KAPLAN ET AL., *supra*, at 9. Third, juvenile fines and fees contribute to recidivism in ways that amplify racial disparities. In a sample of over 1,000 youth, research showed that having unpaid costs after case closing led to higher recidivism, and that youth of color were 68 percent more likely to have unpaid costs than their white peers. Piquero & Jennings, *supra*, at 9-10.

C. Black, Brown, And Indigenous Families Have Dramatically Less Wealth Than White Families And Are Thus More Likely To Face Fines They Cannot Pay

As Black, Brown, and Indigenous youth face higher and more frequent fines and fees, they must also contend with the “[r]acial wealth

inequality [that] is built into the structure of American society,” “compound[ing] the effects of past discrimination.” Cedric Herring & Loren Henderson, *Wealth Inequality in Black and White: Cultural and Structural Sources of the Racial Wealth Gap*, 8 RACE & SOC. PROBLEMS 4, 16 (2016). Because of the racial wealth gap, Black, Brown, and Indigenous youth are more likely to be saddled with unaffordable, and therefore disproportionately punitive, fines under the Court of Appeals’ one-size-fits-all excessive fines inquiry. The racial wealth gap in Seattle, Respondent herein, illustrates this problem vividly. The median net worth of white families in Seattle is \$456,000—almost twenty times more than the median net worth of Black families of \$23,000, and five times that of Latinx families at \$90,000. Gene Balk, *Seattle Household Net Worth Ranks Among Top in Nation—But Wealth Doesn’t Reach Everyone*, SEATTLE TIMES (Feb. 19, 2019), <http://bit.ly/3aACJz5>.

The wealth gap for Black communities in the United States sits on a foundation of nearly 250 years of stolen wealth via enslavement. Thomas Craemer et al., *Wealth Implications of Slavery and Racial Discrimination for African American Descendants of the Enslaved*, 47 REV. BLACK POL. ECON. 218 (2020). A recent study estimates the total cost of enslavement to descendants of the enslaved at somewhere between \$12 trillion based on

land or prices, and \$6.2 quadrillion based on wages with interest. *Id.*⁹ Around the same time, Indigenous communities were devastated by official policies of genocide, displacement, forced assimilation, and involuntary federal resource trusts. MEIZHU LUI ET AL., *THE COLOR OF WEALTH: THE STORY BEHIND THE U.S. RACIAL WEALTH DIVIDE* 30-31, 35 (2006). One estimate places the amount of Indigenous wealth lost due to federal trust mismanagement alone at \$137 billion. *Id.*

Rather than compensating Black and Indigenous Americans for these incredible injustices, state-sanctioned and state-created discrimination kept an economic stranglehold on minority communities, including Latinx communities who had lost resources due to American invasions and annexations and Asian Americans treated as “perpetual foreigners” unworthy of government aid. *Id.* at 25. While white Americans were granted large parcels of land in the American west—land often taken by force from Indigenous communities—the government reneged on its promise to provide 40 acres of land to the formerly enslaved. William “Sandy” Darity & Kirsten Mullen, *Black Reparations and the Racial Wealth Gap*, BROOKINGS (June 15, 2020), <http://brook.gs/3aACPGX>. Black people were systemically excluded from government-sponsored wealth-building

⁹ These estimates do not include lost opportunity costs, pain and suffering, colonial enslavement, or racial discrimination following the abolition of slavery.

programs during the New Deal, and the GI Bill was gutted by discriminatory application. Trymaine Lee, *How America's Vast Racial Wealth Gap Grew: By Plunder*, N.Y. TIMES MAGAZINE (Aug. 14, 2019), <http://nyti.ms/3tk1ND3>. The Fair Housing Administration and Federal Home Loan Banking Board excluded non-white communities from loan eligibility. Louis Lee Woods, *The Federal Home Loan Bank Board, Redlining, and the National Proliferation of Racial Lending Discrimination, 1921-1950*, 38 J. URBAN HIST. 1036, 1036 (2012); Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), <http://bit.ly/2LgBigu>. And racial terrorism, including lynchings, “had consequences in terms of accumulation, participation, and the transmission of generational wealth” by forcing many Black Americans to abandon their homes and property to reach safety. Julianne Malveaux, *Terrorism and Economic Injustice After Enslavement*, ACLU, <http://bit.ly/3oLOZBY>.

This shameful history has a cumulative impact. According to one economic study looking at American wealth and income since 1949, “[n]o progress has been made in reducing income and wealth inequalities between black and white households over the past 70 years.” Moritz Kuhn et al., *Income and Wealth Inequality in America, 1949-2016* 1 (Fed. Rsrv. Bank of Minneapolis Inst. Working Paper 9, 2018) (emphasis added), <http://bit.ly/39MLsPr>. In fact, the racial gap in net worth increased after the

Great Recession as non-white families sustained greater losses. Jeffrey P. Thompson & Gustavo Suarez, *Exploring the Racial Wealth Gap Using the Survey of Consumer Finances 2* (FEDS Working Paper No. 2015-076, 2015), <http://bit.ly/39M43e1>. As of 2016, white median family wealth was nearly ten times Black median family wealth. Kriston McIntosh et al., *Examining the Black-White Wealth Gap*, BROOKINGS (Feb. 27, 2020), <http://brook.gs/39Jnbd6>.

The obvious result of this wealth gap is that a \$500 fine is *more likely* to be financially devastating, and thus disproportionate, to a Black, Brown, or Indigenous youth than a white youth. An excessive fines analysis that leaves out personal circumstances will only multiply the injuries of the past and disproportionately harm Black, Brown, and Indigenous youth and communities. As this Court stated, the legal community is “capable of taking steps to address” the continuing injustices of racism. Supreme Court Letter (June 4, 2020). In “recogniz[ing] the role we have played in devaluing [B]lack lives,” we urge this Court to ensure that its Excessive Fines jurisprudence does not predictably recreate the injustices of the past by imposing fines and fees without regard for a defendant’s circumstances.

CONCLUSION

Amici respectfully urge this Court to adopt an Excessive Fines proportionality test that includes consideration of personal circumstances,

as necessitated by youth's lessened culpability, limited or non-existent financial resources, and the unique harms fines and fees pose for youth and their families.

Respectfully Submitted,

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